



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2005

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR2005-05333

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 226306.

The Texas Department of Insurance (the "department") received a request for the 2004 fourth quarter reports of Pacific Life & Annuity Company ("Pacific"), Principal Life Insurance Company ("Principal"), and Celtic Insurance Company ("Celtic"), as well as the 2003 fourth quarter report of Fortis and the 2004 Form 2A for Private Healthcare System, Incorporated. You indicate that release of the submitted information may implicate the proprietary interests of Pacific, Principal, and Celtic, although the department takes no position on whether this information should be withheld. You state, and provide documentation showing, that you notified Pacific, Principal, and Celtic of the request and of their right to submit arguments to this office as to why their information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). You also contend that e-mail addresses in the submitted information are excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted the 2004 fourth quarter reports for Pacific, Principal, and Celtic for our review. *See Gov't Code* § 552.301(e)(1)(D). As you have not

submitted the 2003 fourth quarter report of Fortis or the 2004 Form 2A for Private Healthcare Systems, Inc. for our review, we assume the department has released these documents to the extent the department maintained them on the date the department received this request. If not, the department must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We also note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither Pacific, Principal, nor Celtic has submitted comments to this office explaining how release of the submitted information would affect the company's proprietary interests. Therefore, Pacific, Principal, and Celtic have provided us with no basis to conclude that the companies have protected proprietary interests in any of the submitted information, and none of it may be withheld on that basis. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Next, we will address your claim under section 552.137 of the Government Code. This section excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is specifically excluded by section 552.137(c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). You indicate that the relevant individuals have not consented to disclosure of their e-mail addresses. We therefore determine that the department must withhold the marked e-mail addresses pursuant to section 552.137(a).

In summary, the marked e-mail addresses must be withheld under section 552.137(a) of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

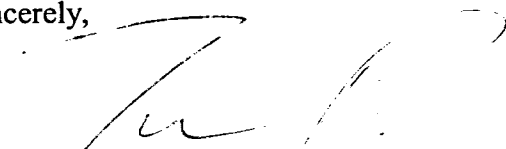
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 226306

Enc. Submitted documents

c: Mr. Ed Saks
Escamilla & Poneck, Inc.
P.O. Box 200
San Antonio, Texas 78291-0200
(w/o enclosures)

Pacific Life & Annuity Company
Attn: Deborah Hanselman
2300 Main Street
Irvine, California 92614
(w/o enclosures)

Principal Life Insurance Company
Attn: Rhonda Oviatt
711 High Street - K5-E81
Des Moines, Iowa 50392-0302
(w/o enclosures)

Celtic Insurance Company
Attn: Eric Wilmer
233 South Wacker Drive, Suite 700
Chicago, Illinois 60606
(w/o enclosures)